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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4616 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra .. Applicant (Original Complainant)

V/s.

Anil Balkrishna Karangutkar & Anr. .. Respondents. (Orig.Accused Nos. 1 and 2)

Mr. Y. S. Shinde A.P.P. for the Applicant - State.

CORAM : SMT.V.K.TAHILRAMANI, J.
DATE : 4th October, 2007.

P.C. :-

. Heard learned A.P.P. for the applicant - State of Maharashtra and perused the record of the case produced by the A.P.P. The applicant has filed this application for leave to file an appeal against the Judgment and Order of acquittal dated 13th June, 2006 passed by the Learned Special Judge (P.C.Act) Raigad, Alibag in Special case No. 8 of 2002. By the said Judgment and order the learned Special Judge acquitted the respondents under section 7, 12, 13 (1)(d) punishable under section 13(2) of the Prevention of Corruption Act, 1988.

2. The prosecution case briefly stated is as under :

. The respondent no.1 was working as accountant and respondent no. 2 was working as a cashier in the employment of Uran Nagar Parishad. The complainant had filled in a tender for the construction of gutter for Uran Nagar Parishad. This tender was accepted and he started work. After completion of work when the complainant requested for payment, the complainant was told that he would have to pay 21 % which would be shared by various officers. The complainant met respondent no. 1 who suggested that he should give 21 % bribe, to be shared by various officers and then only the complainant would be given the cheque for the amount due to him. According to the complainant he handed over the amount by way of cheque to the respondent no.2. Thereafter, complaint came to be lodged.

3. The main reason given by the learned Special Judge for acquitting the respondent is that there is no legal and valid sanction. Both the respondents were the employees of the Nagar Parishad as such the Municipal Council is the authority competent to appoint and remove them from services. From the evidence on record, it is clear that it was necessary that there should be a resolution of the Council authorising removal and such resolution of the Council is only given effect to by the chief officer. This obviously means that the Municipal Council was the competent

authority to accord sanction. However, it is an admitted fact that the Council turned down the proposal and refused to accord sanction. The decision of the Council was communicated to the officials of the Anti Corruption Bureau who in return brought to the notice of the Chief Officer, the Government decision to the effect that the Counsel has to obtain permission from the Controlling Authority if the sanction for prosecution is to be refused. Accordingly, a proposal was sent to the Director of Municipal Administration alongwith a copy of the resolution passed by the Council, but the then Chief Officer Dhage did not receive any communication. The witness Vilas Dhage has further deposed that as no communication was received from the Controlling Authority within a period of 30 days, he informed the Investigating Officer to proceed to lodge a prosecution, but then the Investigating Officer wanted the Chief Officer to accord sanction in the proforma and, therefore, the Investigating Officer sent a draft of the sanction order. It has been clearly stated by the witness Vilas Dharge that he signed the sanction order, having just filled in certain blanks, such as mentioning of his name, the date and the writing of his own signature and no other further acts was done by him. It has further been stated by him that although a draft of the sanction order was received by him, he did not agree with all the contents thereof, but he signed the same and sent it back to the authority concerned for launching of the

prosecution. The evidence of Vilas Dhage clearly shows that he has not applied his mind while according sanction. This clearly makes the sanction defective.

4. The learned Special Judge has acquitted the respondent on the ground that there is no legal and valid sanction. Looking to the evidence on record, the view taken by the learned Special Judge is a reasonable and possible view.

5. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstances that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C. Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Special Judge is a reasonable and possible view, hence, no interference is called for.

6. In this view of the matter, application for leave

to appeal is rejected and consequently appeal stands dismissed.

(SMT.V.K.TAHILRAMANI, J.)